2-333 FILE COPY

AUG 28 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-333

JAMES H. BIBLE,

Petitioner,

versus

CHEVRON OIL COMPANY, ET AL.,

Respondent.

Petition for Writ of Certiorari to The United States Court of Appeals for the Fifth Circuit

MARTZELL AND MONTERO
John R. Martzell
Attorney for Petitioner
JAMES H. BIBLE

1012 Richards Building
New Orleans, Louisiana 70112

INDEX

	Page
Opinions of the Courts Below	1
Statement of Jurisdiction	1
Question Presented for Review	2
Statutes Involved	2
Statement of the Case	2
Argument in Support of Petition for Writ of Certiorari	4
Certificate	11
Appendix No. 1	1a
Appendix No. 2	11a
Appendix No. 3	14a

TABLE OF AUTHORITIES

Cases:

Chevron Oil Co. v. Huson, 1971, 404 U.S. 97	4, 5, 10
England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 at 419-422	8
Huson v. Otis Engineering Corporation, (5 Cir.) 430 F.2d at 27-28 aff'd sub nom.	4
Loffland Bros. v. Roberts, (5th Cir.) 386 F.2d 540	5
Movible Offshore v. Ousley, (5th Cir.) 346 F.2d 870	5
Ocean Offshore & Exploration Co. v. Berry Bros. Oilfield Service, (5th Cir.) 377 F.2d 511	5
Panama Railroad Company v. Johnson, 364 U.S. 375	9

TABLE OF AUTHORITIES (Continued)

Page

Peytavin v. Government Employees Insurance Company, (5th Cir.) 453 F.2d 1121 9

Pure Oil Co. v. Snipes, (5 Cir.) 293 F.2d 60 ....4, 5, 8, 9

Rodrigue v. Aetna Casualty & Surety Co., 395 U.S. 352 .....3, 4, 5, 6, 7, 9, 10

Statutes:

LSA-C.C. 3536 2

LSA-R.S. 49:1 2

Outer Continental Shelf Lands Act, 43 U.S.C. §1331-1343 ..... 2, 8

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1972

No.

JAMES H. BIBLE,

Petitioner,

versus

CHEVRON OIL COMPANY ET AL.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPINIONS OF THE COURTS BELOW

A written, unpublished opinion was delivered by the Honorable Albin B. Rubin, United States District Judge for the Eastern District of Louisiana on December 31, 1969 which is attached as Appendix 1. A written published but as yet unreported opinion was delivered per curiam by the United States Court of Appeals for the Fifth Circuit on May 30, 1972 and is attached as Appendix No. 2.

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals was rendered and entered on May 30, 1972. No rehear-

ing was sought. Jurisdiction is vested in this Honorable Court on a petition for writ of certiorari pursuant to 28 U.S.C. §1254.

QUESTION PRESENTED FOR REVIEW

Should the equitable doctrine of prospective application for the Louisiana one year tort prescription for injuries sustained on fixed offshore oil platforms set forth in this Court's decision in *Huson v. Chevron Oil Co.*, 404 U.S. 97 apply to injuries sustained prior to this Court's decision in *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 but more than one year from that date of the accident on platforms located less than three miles off the coast of Louisiana.

STATUTES INVOLVED

Louisiana Civil Code Article 3536, LSA-C.C. 3536

Louisiana Revised Statutes, Title 49, Sec. 1, LSA-R.S. 49:1

Outer Continental Shelf Lands Act, 43 U.S.C. §1331

STATEMENT OF THE CASE

On August 17, 1966 James H. Bible was employed by Houma Welders, Inc. to do certain construction work on a fixed offshore oil platform in the Gulf of Mexico. During the course of his work he was called upon to use a newly purchased chain hoist or "come-a-long" manufactured by American Chain and Cable

Company, Inc., Wright Hoist Division. While the hoist was lifting a large beam into place, the chain hoist failed causing Mr. Bible to be pulled into a hole in the platform and into the waters of the Gulf of Mexico. In the fall, Mr. Bible struck his leg on a support beam severely injuring himself.

Suit was filed in the United States District Court for the Eastern District of Louisiana under diversity jurisdiction against Chevron Oil Company and American Chain and Cable Company, Inc. on February 26 1968. Both parties answered. Neither party pleaded that the claim had prescribed. Extended discovery was undertaken, the chain hoist was recovered from the sea and filed in the registry of the Court; pre-trial conferences were held. The initial answers to interrogatories provided by Chevron Oil Company disclosed that the platform was on a Louisiana State Lease in Bay Marchand of the Gulf of Mexico.

On June 9, 1969 this Court rendered its opinion in *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352. On August 5, 1969 American Chain and Cable Company filed a motion to dismiss premised on the fact that suit had not been filed within one year of the date of the accident as required by Louisiana Civil Code Article 3536. The record was supplemented with affidavits and depositions for the purpose of deciding the motion. On October 21, 1969 a Statement of Material Facts to which there is no genuine issue was filed by American Chain and Cable Company which specified that the platform was located approximately one mile from the shoreline of the State of Louisiana.

Judgment was rendered by the District Court on January 6, 1970 sustaining the motion of American Chain and Cable Co. that the plaintiff's claim was not maritime in nature and that under this Court's decision in *Rodrigue v. Aetna,* supra, the suit was not timely fixed under Louisiana law.

A timely appeal was filed to the Fifth Circuit Court of Appeals and the decision of the District Court was affirmed, May 30, 1972.

ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This case is another bit of "fallout from Rodrigue . . . with which the Bar of Louisiana soon had to reckon . . . . ." see *Huson v. Otis Engineering Corporation,* (5 Cir.) 430 F.2d at 27-28 aff'd. sub nom. *Chevron Oil Co. v. Huson,* 1971 404 U.S. 97. With the coming of *Rodrigue,* Bench, Bar and litigants suddenly found that they had for years been erroneously dealing with injuries and death on offshore oil platforms under maritime law rather than the law of the adjacent state. The first group of litigants who found themselves ensnared by *Rodrigue* were those who, relying on *Pure Oil Co. v. Snipes,* (5 Cir.) 293 F.2d 60, filed their suits more than one year after the accident on the assumption that laches applied to their case. Mr. Huson's case was the first to reach this Court and this Court resolved his dilemma by holding that as to prescription, the decision in *Rodrigue* would be applied prospectively only. *Chevron Oil Co. v. Huson,* supra. So much for

the problems of those pre-*Rodrigue* injuries on platforms more than three miles from the Louisiana coast.

The instant case involves another of Chevron Oil Company's fixed offshore oil platforms. However, this platform is within the three-mile limit. Mr. Bible was told by the Fifth Circuit Court of Appeals that the equitable relief of *Chevron Oil Co. v. Huson* would not apply to him since *Rodrigue* only applied to those areas covered by the Outer Continental Shelf Lands Act which clearly did not apply to Mr. Bible. The clear implication is that Mr. Bible and his counsel had no reason to believe that admiralty law applied to the platform on which he was injured and that he should have always known that Louisiana law applied to his case.

Since the decision in *Pure Oil Co. v. Snipes*, (5th Cir.) 293 F.2d, 60, it has been fairly assumed that maritime law applied to offshore oil platforms out in the Gulf of Mexico, whether within Louisiana's oft-disputed boundary or beyond it. In *Snipes*, it was concluded that the hazards of offshore platforms were maritime in nature and that, therefore, even if the accident had occurred within Louisiana's boundaries, the rule of laches still applied. See *Snipes*, 293 F.2d, at 69-70. While *Snipes* and the decisions which followed *Movible Offshore v. Ousley*, (5th Cir.) 346 F.2d 870; *Ocean Drilling & Exploration Co. v. Berry Bros. Oilfield Service*, (5th Cir.) 377 F.2d, 511; and *Loffland Bros. v. Roberts*, (5th Cir.) 386 F.2d, 540, dealt with the Outer Continental Shelf, there has never been a suggestion contrary to the language in *Snipes* to suggest that mari-

time law did not apply to offshore oil platforms even if within State waters. Vast sums have been paid to litigants on this belief and numerous cases tried applying admiralty standards, regardless of the location of the platforms. Compensation was paid under the Longshoremen's and Harborworkers Act. The instant case is a classic example.

Until *Rodrigue* was decided, this case took the ordinary course of a case in litigation. Complaint, general denial, numerous interrogatories and answers, depositions of all the witnesses, medical examinations of the plaintiffs, experts retained, the allegedly defective equipment placed in the registry of the Court and examined, conferences with the Court on discovery and a pre-trial setting. Bible was paid compensation under the Longshoremen and Harbor Workers Act. The answers to interrogatories in the record reflected that the platform was not on the Outer Continental Shelf early in the litigation. (App. 12-14). While the record clearly disclosed that the suit has been filed more than one year after the accident occurred, prescription was not pled and not raised until after the decision in *Rodrigue*.

James Bible found himself in the posture of numerous litigants in the Federal Courts of Louisiana on the day *Rodrigue* was decided. Now that *Rodrigue* was decided, would his suit be dismissed because Louisiana law had been declared the exclusive law on offshore oil platforms?

While the District Court requested thorough briefs on the prospective application of *Rodrigue*, that Court held that *Rodrigue* did not apply and that, therefore, the retrospective v. prospective application question need not be faced. With this position, appellant must disagree. *Rodrigue* operated on two levels. In the first instance, the Court held that maritime law would not apply to an injury on a platform. Secondly, it held that the Outer Continental Shelf Lands Act applied State law exclusively. By so doing, the Court overruled prior jurisprudence, particularly with respect to application of maritime law. In fact, one of the predominating factors in the *Snipes* case, Court's application of maritime law was the maritime hazard of falling into the water — the precise risk encountered by Mr. Bible. See 293 F.2d, at 66-67.

The effect of *Rodrigue* on Mr. Bible's rights, both in law and in fact, is obvious and significant. Until that fateful June 9, 1969 both bench and bar clearly understood that maritime law applied to this action. Only after *Rodrigue* upset well-established rules, was any plea of prescription made and sustained. Appellant submits that this is so only because, prior to *Rodrigue*, maritime law applied to injuries on the structures. Appellant further submits that this Court must confront the issue of the prospective application of *Rodrigue* as it relates to application of Louisiana one-year prescription.

The United States Supreme Court has made it clear that in the application of the doctrine of prospective application of judicial decision a mistake of law by

a party will not bar him from his day in Court if the actions of the party were based on a reasonable misunderstanding of prior judicial decision. *See England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 at 419-422.

By affidavit which is not part of the Appendix but which is part of the documents attached to the record in the appeal to the Fifth Circuit, Appendix 3, original counsel for James H. Bible indicated his reliance on the decision in *Pure Oil Company v. Snipes* and the cases following thereafter for the proposition that the doctrine of laches applied to James H. Bible's accident. In light of the subsequent disclosure that the fixed platform involved in this case was not on the Outer Continental Shelf, that reliance must have been reasonably based on the legal conclusion that the admiralty doctrine of laches applied to all fixed offshore oil production platforms.

James H. Bible respectfully suggests that prior to the Supreme Court's decision in *Rodrigue v. Aetna*, supra, this was a reasonable conclusion. In *Pure Oil v. Snipes* it was held that the Congress applied maritime law to fixed platforms under the Outer Continental Shelf Lands Act, 43 U.S.C.A. §§1331-1343 because these fixed oilwell drilling structures in the midst of the high seas created the hazards of the sea and that the standards of safety of the maritime law were the most appropriate to the circumstances.

Those factors of "maritime connection" have recently been reiterated as outcome determative for admiral-

ty jurisdiction in *Peytavin v. Government Employees Insurance Company*, (5th Cir.) 453 F.2d 1121.

In *Panama Railroad Company v. Johnson*, 264 U.S. 375 the United States Supreme Court ruled that the Congress might alter, qualify, or supplement the maritime law and jurisdiction with one particular exception.

> "But there are limitations which have come to be well recognized. One is that there are boundries to the maritime law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislation, as by excluding a thing falling clearly within them or *including a thing falling clearly without.*" *Panama Railroad Co. v. Johnson*, supra, at 386. [Emphasis applied]

Hence it was clear to litigant, Bar and Bench from the Fifth Circuit's decision in *Pure Oil Company v. Snipes* that the Congress adopted maritime law on a fixed offshore production platform because the Congress *could* adopt maritime law as a law not falling clearly without the admiralty jurisdiction. Petitioner Bible urges that it was reasonable to assume that the adoption of Federal maritime law on fixed platforms was constitutionally permissible because such platforms were within the admiralty jurisdiction. This Court clearly understood this presupposition in ruling that the Death on the High Seas Act, 46 U.S.C. §§761-768 was not the exclusive law on fixed platforms. The Supreme Court said in *Rodrigue v. Aetna*, supra at 359:

"However, for Federal law to oust adopted State law Federal law must first apply."

Hence, petitioner submits, it was reasonable to assume admiralty jurisdiction applied to all offshore platforms independent of their geographical location landward or seaward of some yet ill-defined line prior to the Supreme Court's decision in *Rodrigue v. Aetna.*

Petitioner Bible suggests that his understandable misreading of the law prior to *Rodrigue* should not deny him potential redress for his injuries. "As in England v. State Board of Medical Examiners, supra, nonretroactive application here simply preserves his right to a day in court." *Chevron Oil Company v. Huson,* 404 U.S. 97.

It is submitted that this Court should grant certiorari to grant equitable relief to James H. Bible by prospective application of the effects of this Court's decision in *Rodrigue v. Aetna.*

Respectfully submitted:
MARTZELL AND MONTERO

BY _____

JOHN R. MARTZELL,
ESQUIRE
1012 Richards Building
New Orleans, La. 70112
(504) 581-9065

CERTIFICATE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari on Behalf of James H. Bible has been served upon Frank C. Allen, Jr. and Henry McNamara, Jr. by depositing copies of same in the United States Mails, postage prepaid, addressed to their respective offices.

New Orleans, Louisiana, this ____ day of August, 1972.

JOHN R. MARTZELL

APPENDIX NO. 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

JAMES H. BIBLE,

Plaintiff,

versus

CIVIL ACTION
No. 68-382
SECTION "C"

CHEVRON OIL COMPANY, THE CALIFORNIA COMPANY DIVISION, & AMERICAN CHAIN AND CABLE COMPANY, INC., WRIGHT HOIST DIVISION,

Defendants.

John R. Martzell, Esq.
Kenneth W. Manuel, Esq.
Attorneys for Plaintiff

Henry D. McNamara, Esq.
Attorney for Defendant, American Chain & Cable Company, Inc.

RUBIN, District Judge:

On August 17, 1966, James Bible, an employee of Houma Welders, Inc., was working as a welder's helper on a fixed platform located in the Gulf of Mexico about one mile offshore from Lafourche Parish, Louisiana. An opening in the deck of the platform near

its southeast corner was being decked and that part of the structure was being reinforced with ten inch steel beams to support a compressor. Bible was standing near the opening, holding one end of a rope; the other end was tied to a beam being lowered by him and his co-workers into place in the opening. It is contended that a mechanical device, known as a come-along, which was being used in lowering the beam, failed, the beam fell, and Bible was jerked by the rope. He collided with a co-worker, and both fell through the opening. Bible fell about fifty feet from the platform deck to the water below. Before striking the water he struck a metal brace that formed a part of the platform's substructure. The brace projected from the platform into the water but the portion that the plaintiff struck was not submerged. As a result of the fall Bible suffered fractures of his left leg and hip area.

Suit was filed against Chevron Oil Company, the owner of the platform, and American Chain and Cable Company, Inc., (American Chain), the manufacturer of the come-along, for damages based on maritime tort, on February 26, 1968. American Chain has filed a motion to dismiss and for summary judgment on the basis that the suit is a non-maritime diversity suit controlled entirely by Louisiana law and the one-year Louisiana prescriptive period, LSA-C.C. Art. 3536, applies; hence the action must be dismissed.

The accident happened about one mile from the Louisiana coast in Louisiana waters; therefore the provisions of the Submerged Lands Act relative to the Outer Continental Shelf do not apply. 43 U.S.C.

§§ 1301, 1331, 1333(a).[1] *Compare* Pure Oil Company v. Snipes, 5 Cir. 1961, 293 F.2d 60 where a similar accident occurred on a fixed platform located 65 miles off the Louisiana coast and the court found the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331, 1333(a), applicable.

The plaintiff contends that admiralty rules, including the doctrine of laches, apply here because "the accident and injury culminated in the navigable waters of the Gulf of Mexico." But this statement misapprehends the criterion to be applied.

A tort is maritime and therefore falls within the admiralty jurisdiction only if "the substance and consummation of the [injury that gave rise to the cause of action took] place upon [navigable water]." The Plymouth, 1865, 70 U.S. (3 Wall.) 20, 35, 18 L.Ed. 125. "[T]he whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon which the jurisdiction depends — on the high seas or navigable waters." 70 U.S. (3 Wall.) at 36. This is the general rule applied to injuries involving several jurisdictions reported by the Restatement of Conflicts, § 377, which states:

> "The place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place."

---

[1]The Outer Continental Shelf Lands Act, 43 U.S.C. § 1331(a), defines the Outer Continental Shelf as the area of submerged lands laying beyond the seaward boundaries of the adjacent states.

Explaining this rule the Note to it, Restatement of Conflicts, page 455, observes:

> "Except in the case of harm from poison, when a person sustains bodily harm, the place of wrong is the place where the harmful force takes effect upon the body.
>
> "Such a force is first set in motion by some human being. It is quite immaterial in what state he set the force in motion. It must alone or in cooperation with other forces harm the body of another. The person harmed may thereafter go into another state and die from the injury or suffer other loss therefrom. The place where this last event happens is also immaterial. The question is only where did the force impinge upon his body.'[2]

---

[2]Section 379a of the Second Restatement retains the "last event" rule of the original Restatement, stating: "In an action for a personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless some other state has a more significant relationship with the occurrence and the parties as to the particular issue involved, in which event the law of the latter state will govern." Tentative Draft No. 8, April 24, 1964. Comment (a) to Section 379a declares that " 'personal injury' may involve either physical harm or mental disturbance, as fright and shock, resulting from physical harm or from threatened physical harm or other injury to oneself or to another." *Id.* The "place of injury" is defined by Comment (b) as "The place * * * where the force set in motion by the actor first takes effect on the person." *Id.*

Even if the recent trend reflected by the Second Restatement and by recent cases, see *e.g.*, the discussion in Leflar, Choice-Influencing Considerations in Conflicts Law, 1966, 41 N.Y. U.L. Rev 267; Leflar, More on Choice-Influencing Considerations, 1966, 54 Cal. Rev. 1584; and Note, 1967, 42 Notre

This appears to be a correct statement of the rule usually applied in tort law. It is apparently the rule applied to a land-water accident in the Supreme Court decision in T. Smith & Son v. Taylor, 1928, 276 U.S. 179, 48 S.Ct. 228, 72 L.Ed. 520. That case concerned a decedent who was standing on a piece of equipment resting solely on the wharf, an extension of land, when he was struck by a sling loaded with cargo, and knocked into the water. Some time later he was found dead. Suit was brought under the Louisiana Compensation Law exclusively for the death that occurred in the water; no claim was made for the injuries sustained on the wharf. The Court held that the cause of action arose on land and state law was applicable,[3] saying:

Dame Lawyer 577, were employed and we looked to the jurisdiction having the most significant contacts with this injury, rather than to the place of the tort, we would reach the same result. The most significant relationship of the issues involved are with the platform and Louisiana, the adjacent state, rather than with the admiralty jurisdiction; the place of final aggravation of the injuries was the Gulf of Mexico, a purely fortuitous site. The Supreme Court, in Rodrigue v. Aetna Casualty and Surety Co., 1969, 395 U.S. 352, 89 S.Ct. 1835, noted the important relationship "between the men working on these stationary islands and the adjacent shore to which they commute to visit their families * * *" 89 S.C. at 1842.

[3]Compare, Nacirema Operating Co. v. Johnson, 1969, ____ U.S. ____, ____ S.Ct. ____ (38 Law Week 4053, December 9, 1969). In *Nacirema* longshoremen were transferring cargo from railroad cars on piers to ships' cranes for transfer to the ships when they were struck by swinging cargo being hoisted by the ship's crane and were thrown against the side of the railroad car and crushed or knocked to the pier. The Supreme Court held that the injuries did not occur upon navigable water, hence they were not compensable under the Longshoreman and Harbor Workers Compensation Act, 33 U.S.C. §§901-950. The Court hinted, however, that since a

"[Plaintiff in error] argues that as no claim was made for injuries sustained while deceased was on land and as the suit was solely for death that occurred in the river, the case is exclusively within the admiralty jurisdiction. But this is a partial view that cannot be sustained. The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death. The G. R. Booth, 171 U.S. 450, 460 19 S.Ct. 9, 43 L. Ed. 234. The substance and consummation of the occurence which gave rise to the cause of action took place on land. The Plymouth, supra." 276 U.S. at 182, 4 S.Ct. at 229.

Conversely, when a disembarking passenger fell from a gang plank to a dock, the passenger's cause of action was held to be maritime. The Admiral Peoples, 1935, 295 U.S. 649, 55 S.Ct. 885, 79 L.Ed. 1633. The cause of action, that case said, "arose from the breach of duty owing to her while she was still on the ship and using its facility for disembarking." 295 U.S. at 652, 55 S.Ct. at 887.

---

vessel was involved the Extension of Admiralty Act of 1946, 46 U.S.C. §740, discussed at note 6 infra, might provide admiralty jurisdiction under the rationale of Gutierrez v. Waterman S.S. Corp., 1962, 373 U.S. 206, 83 S.Ct. 1185.

See also, Rodrigue v. Aetna Casualty and Surety Co, 1969, 395 U.S. 352, 89 S.Ct. 1835, involving injuries on offshore platforms located on the Outer Continental Shelf where the Court found admiralty tort jurisdiction lacking and the Death on the High Seas Act, 46 U.S.C. §§761-768 inapplicable.

The "place of harmful force on the body" rule had earlier been applied in The Strabo, E.D. N.Y. 1898, 90 Fed. 110, affirmed, 2 Cir. 1900, 98 Fed. 998, where a ladder that was not properly secured to a ship's rail fell and libelant was thrown to the dock as he attempted to leave the vessel. Admiralty jurisdiction was sustained, the court observing:

> "If a seaman, by the master's neglect, should fall overboard, would this court entertain jurisdiction if the seaman fell in the water, and decline jurisdiction if he fell on the dock or other land? The inception of a cause of action is not usually defined by such a rule. * * * [T]he act or omission which puts in force the primary hurtful agency does not constitute the cause of action; for, until such force takes effect injuriously upon the person * * * of some one, there is a mere naked breach of duty, and the case is damnum absque injuria; but, where a breach of duty puts in motion agencies that come in actual injurious collision with the person * * * of another to whom the duty was due, the cause of action at once arises, and the locality of the tort is fixed, however much the physical injury may be aggravated by subsequent occurrences, which may be regarded as continuations of the original wrongful act, and its immediate operation, and in a sense as incidents thereof" 90 Fed. at 113.[4]

---

[4]"[A] physical injury was caused to the libelant by his fall, which was increased by his striking the dock" 90 Fed. at 110. "[I]f

In affirming the District Court in that case the Circuit Court of Appeals said:

> "The cause of action originated and the injury had commenced on the ship, the consummation somewhere being inevitable. It is not of vital importance to the admiralty jurisdiction whether the injury culminated on the stringpiece of the wharf or in the water." 98 Fed. at 1000.

A similar principle was applied by the Fifth Circuit many years ago in L'Hote v. Crowell, 5 Cir. 1931, 54 F.2d 212, when a longshoreman who had been working on a wharf putting bales in a sling climbed into the sling on the last load to board the vessel and was fatally injured when the sling hit the rail or side of the ship knocking him off the load back onto the wharf. The court held that he had finished his work on the wharf and was under the control of an instrumentality of the ship. Similarly, when a longshoreman working on the deck of a vessel was struck by a swinging hoist and thrown onto a wharf, the cause of action was held to be maritime. Minnie v. Port Huron Terminal Co., 1935, 295 U.S. 647, 55 S.Ct. 884, 79 L.Ed. 1631.

The Restatement rule is cited and applied in Jordan v. States Marine Corporation of Delaware, 9 Cir. 1958, 257 F.2d 232. There the wife of a seaman brought suit

---

the libelant received any physical injury before striking the dock, although the sum of his injuries was not complete until he did reach the dock, this court has jurisdiction." ***Id.*** **at 114.**

against the shipowner for a maritime injury to her husband, claiming loss of consortium and sexual intercourse. Her husband had signed a release but she had not, and she set forth her right under the law of her domicile, Oregon, to recover for loss of consortium. Her contention was, "the injury *she* sustained was in the State of Oregon, the place of the parties' marital domicile, which granted her a substantive right to recover her interference with her consortium by third parties.' " 257 F.2d at 233 (Emphasis in original).

Mrs. Jordan cited and relied on the Restatement. But the court construed the "last event" to mean "the last act on board the vessel causing the injury to the husband." 257 F.2d at 233.

Thus analyzed it is clear that the tort that serves as a basis for Bible's claim was a platform tort, governed by the law of the platform. This was Louisiana law because the platform was in Louisiana waters. 43 U.S.C. § 1331.

Dicta in an airliner crash case, Wilson v. Transocean Airlines, N.D. Cal. 1954, 121 F.Supp. 85, 92 support the plaintiff's thesis that this was an admiralty tort.[5] But the application of admiralty rules to aircraft accidents

---

[5] *See also*, Fireman's Fund Ins. Co. v. City of Monterey, N.D. Cal. 1925, 6 F.2d 893 and The City of Lincoln, S.D.N.Y. 1885, 25 Fed. 835 involving water damage to cargo resulting from the collapse of wharves. Compare, Pure Oil Company v. Snipes, 5 Cir. 1961, 293 F.2d 60, 64-66.

on the high seas is supported by more fundamental concepts elaborated upon in Weinstein v. Eastern Airlines, Inc., 3 Cir. 1963, 316 F.2d 758:

> "Today, aircraft have become a major instrument of travel and commerce over and across these same waters. When an aircraft crashes into navigable waters, the dangers to persons and property are much the same as those arising out of the sinking of a ship or a collision between two vessels." 316 F.2d at 763.

Since Louisiana law is applicable here for the reasons already stated, we need not examine the question suggested by counsel, and thoroughly briefed, whether the decision in Rodrigue v. Aetna Casualty & Surety Co., 1969, ____ U.S. ____, 89 S.Ct. 1835 is applicable. Nor need we examine the subsidiary question whether, if the *Rodrigue* decision were applicable, it should be applied prospectively only due to alleged reliance on prior jurisprudence, such as Pure Oil Company v. Snipes, supra, holding maritime principles applicable to accidents similar to the one involved in this case when they occur on the Continental Shelf beyond the state's seaward boundary.

---

[6]Nor need we consider the Extension of Admiralty Act, 46 U.S.C. §740, which extends admiralty jurisdiction to instances of personal injury caused "by a vessel on navigable water, notwithstanding that such * * * injury be done or consummated on land." The Act, by its own terms, applies only to vessels. See Thompson v. Crown Petroleum Corp., 5 Cir. 1969, ____ F.2d ____ (No. 27037, November 3, 1969), and the cases cited therein for the settled rule that, as a matter of law, stationary, fixed platforms are not vessels.

American Chain's motion to dismiss the plaintiff's action as prescribed and for summary judgment is therefore granted.

/s/ JOHN B. RUBIN
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana
December 30th, 1969

APPENDIX NO. 2

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29574

JAMES H. BIBLE,
Plaintiff-Appellant,

versus

CHEVRON OIL COMPANY, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

---

(May 30, 1972)

Before BROWN, Chief Judge, WISDOM and RONEY, Circuit Judges.

PER CURIAM: This appeal involves an action for damages arising from injuries Appellant sustained

while working on a fixed drilling platform located in the Gulf of Mexico, approximately one mile from the Louisiana coast. The Trial Court, determining this to be a non-maritime diversity suit controlled entirely by Louisiana law, held it time-barred by the one-year Louisiana prescription statute, LSA-C.C. art. 3536, granted Chevron's motion for dismissal and entered summary judgment against Appellant. We affirm.

It is undisputed that the Appellant did not institute this action until after the Louisiana prescriptive period had expired. Likewise, there can be no dispute over the fact that the fixed drilling platform upon which Appellant was injured was located within Louisiana territorial waters, 43 U.S.C.A. § 1301, and not within the geographic limits of the Outer Continental Shelf[1] Nevertheless, Appellant argues that the Trial Court erred by holding this action barred under the Louisiana prescription statute.

Bible was injured when he was pulled off the drilling platform by a defective winch apparatus, striking a platform support beam before falling several more feet into the sea. Since the substance and consummation of the occurrence giving rise to the injuries sustained took place on the drilling platform, the fact that Bible

---

[1] 43 U.S.C.A. § 1331 defines the Outer Continental Shelf as the area of submerged lands lying beyond the seaward boundaries of the adjacent states. Since the drilling platform upon which Appellant was injured was located only about a mile from the Louisiana coast and therefore within Louisiana territorial waters, LSA-R.S. art. 49:1, the Outer Continental Shelf Lands Act here has no application. See Zabel v. Tabb, 5 Cir., 1970, 430 F.2d 199, 205, cert. denied, 1971, 401 U.S. 910, 91 S.Ct. 873, 27 L.Ed.2d 808.

ultimately wound up in the drink does not transform this "land based" injury into a maritime injury. See *T. Smith & Sons v. Taylor*, 1928, 276 U.S. 179, 48 S.Ct. 228, 72 L.Ed. 520; *Bertrand v. Forest Corp.*, 5 Cir., 1971, 441 F.2d 809, cert. denied, 1971, 404 U.S. 863, ____ S.Ct. ____, 30 L.Ed.2d 107; *LaLande v. Gulf Oil Corp.*, W.D. La., 1970, 317 F.Supp. 692. Cf. *Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F.2d 60, 1961 A.M.C. 1651. Bible does not seriously argue to the contrary. The District Court was clearly correct in determining this to be a nonmaritime tort.

This Court in *Huson v. Chevron Oil Co.*, 5 Cir., 1970, 430 F.2d 27, 1970 A.M.C. 1978, held the doctrine of laches, rather than the Louisiana prescription statute, LSA-C.C. art. 3536, applicable to an action involving personal injuries which were sustained on a fixed drilling platform located on the Outer Continental Shelf. We reasoned that although *Rodrigue v. Aetna Casualty Surety Co.*, 1969, 395 U.S. 352, 89 S.Ct. 1853, 23 L.Ed.2d 360, 1969 A.M.C. 1082, interpreted the Outer Continental Shelf Lands Act, 43 U.S.C.A. § 1331, et seq., as requiring the application of adjacent state law — when not inconsistent with pertinent Federal law — to such actions, the Louisiana prescription statute for personal injuries as distinguished from death actions had been traditionally considered procedural in nature and under accepted conflicts of laws principles should therefore be disregarded in favor of the procedural rules of the Federal forum. The Supreme Court granted certiorari and we withheld judgment in regard to this appeal, recognizing that although *Huson* involved a fixed drilling platform located outside Louisi-

ana territorial waters on the Outer Continental Shelf, if our holding should be affirmed Appellant could at least make the argument that the doctrine of laches should have equal application in this case.

The Supreme Court has clearly resolved this question against Appellant by holding that *Rodrigue* requires the application of the adjacent state limitations periods to actions arising from fixed drilling platforms located on the Outer Continental Shelf. *Chevron Oil Co. v. Huson*, 1971, 404 U.S. 97, 92 S.Ct. ——, 30 L.Ed.2d 296, 1972 A.M.C. 20.[2]

Louisiana principles clearly control. The District Court's decision is in all respects correct and is affirmed.

AFFIRMED.

APPENDIX NO. 3

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, came and appeared CHESTER A. EGGLESTON, who upon his oath did depose and state that:

---

[2]The Supreme Court affirmed our decision, however, holding that *Rodrigue* was not to be applied retroactively. Since the drilling platform involved in this action was located in Louisiana territorial waters and since *Rodrigue* bears only on actions having their origins on drilling platforms located on the Outer Continental Shelf, this aspect of the Supreme Court's decision does not in any sense strengthen Appellant's argument.

In May of 1967 I was employed as an associate attorney by the firm of Sternfels, Garzotto & Slavich. On May 19, 1967 Mr. James H. Bible retained that firm for the purpose of representing him for injuries sustained in an accident on August 17, 1966 in accordance with a contract of retainer a copy of which is attached to this affidavit. It was known to me that his injuries were sustained while working on an offshore oil platform in the Outer Continental Shelf area of the Gulf of Mexico. I was aware of the one year Louisiana prescription for actions in tort. However, it was my appreciation of the law that for injuries on offshore oil platforms the maritime rule of laches applied and that I was not required to file suit within one year in order to protect James Bible's rights. I relied upon the well-established law of the United States Court of Appeals for the Fifth Circuit as stated in *Pure Oil v. Snipes* (5 Cir. 1961) 293 F.2d 60 and followed in *Flowers v. Savannah Machine and Foundry Company*, (5 Cir. 1962) 310 F.2d 135; *Movable Offshore Company v. Ousley*, (5 Cir. 1965) 364 F.2d 870; *Loffland Brothers v. Roberts*, (5 Cir. 1967) 386 F.2d 540 *cert. den.* 389 U.S. 1040; *ODECO v. Berry Bros. Oilfield Service, Inc.*, (5 Cir. 1967) 377 F.2d 511; *Ross v. Delta Drilling Company* (E.D.La. 1962) 213 F.Supp. 270; *Bergeron v. Aero Associates, Inc.*, (E.D.La. 1963) 213 F.Supp. 936; *Touchet v. Travelers Indemnity Company*, (W.D.La. 1963) 221 F.Supp. 376. Relying on what I believed to be a well-established legal principle of laches I did not file suit against the defendants until February 26, 1968 by copy of the complaint which is attached to this affidavit.

/s/ CHESTER A. EGGLESTON
CHESTER A. EGGLESTON

Sworn to and subscribed
before me this 16th day
of September, 1969.
/s/ STANLEY JOSEPH JACOB
Notary Public

ILE COP

SEP 28 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-333

JAMES H. BIBLE,

Petitioner

versus

CHEVRON OIL COMPANY, ET AL.,

Respondents

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOUTON, ROY, CARMOUCHE, HAILEY, BIVINS & McNAMARA
A. J. McNAMARA
Attorneys for Respondent
American Chain and Cable Company, Inc., Wright Hoist Division

I N D E X

	Page
Argument in Opposition to the Petition for Writ of Certiorari ---	1
Certificate ----------	5

TABLE OF AUTHORITIES

CASES:

The Admiral Peoples, 1935, 295 U.S. 649, 55 S.Ct. 885 ----------	2,3
Chevron Oil Co. v. Huson, 1971, 404 U.S. 97 ----------	4
Loffland Bros. v. Robert, 5 Cir. 1968, 386 F.2d 540 ----------	3
Movible Offshore v. Ousley, 5 Cir. 1965, 346 F.2d 870 ----------	2
Ocean Drilling & Exploration Co. v. Berry Bros. Oilfield Service, 5 Cir. 1967, 377 F.2d 511 ----------	2
Pure Oil v. Snipes, 5 Cir. 1961, 293 F.2d 60 ----------	2,3,4
Rodrigue v. Aetna Casualty & Surety Co., 1969, 395 U.S. 352, 89 S.Ct. 1835	2,4
T. Smith & Son v. Taylor, 1928, 276 U.S.179, 48 S.Ct. 228, 72 L.Ed. 520 ---	2,3

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1972

NO. 72-333

JAMES H. BIBLE,

Petitioner,

versus

CHEVRON OIL COMPANY, ET AL,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MAY IT PLEASE THE COURT:

ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Petitioner was injured in an accident that occurred on a fixed oil platform located in the Gulf of Mexico within the seaward boundary of the State of Louisiana. Suit was filed in the United States District Court for the Eastern District of Louisiana six months following the expiration of the Louisiana prescriptive period. Summary Judgment was granted in the District Court and that decision was affirmed

by the United States Court of Appeals for the Fifth Circuit. The decisions of both of the Courts below are clearly based upon well established principles by which the interface between maritime and non-maritime torts has been traditionally defined.

The rule of law applied in the case of petitioner was no different from that applied in T. Smith & Son v. Taylor, 1928, 276 U.S. 179, 48 S.Ct. 228, 72 L.Ed. 520, when a death action was brought by the heirs of a decedent who, while standing on a wharf, was struck by a sling and knocked into the water. The claim that was asserted was exclusively for the death that had occurred in the water, but the Court said:

> "...the blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death."

Similarly, when a disembarking passenger fell from a gangplank to a dock, the action was held to be maritime because it "arose from the breach of duty owing to her while she was still on the ship and using its facility for disembarking." The Admiral Peoples, 1935, 295 U.S. 649, 652, 55 S.Ct. 885, 887.

The decision rendered on June 9, 1969, in Rodrigue v. Aetna Casualty & Surety Co., 395 U.S. 352, 89 S.Ct. 1835, did not alter the firmly established jurisprudence that governs the instant case. Although the holding in Rodrigue has upset that line of cases including Pure Oil v. Snipes, 5 Cir. 1961, 293 F.2d 60 and its progeny, Movible Offshore v. Ousley, 5 Cir. 1965, 346 F.2d 870; Ocean

Drilling & Exploration Co. v. Berry Bros. Oilfield Service, 5 Cir. 1967, 377 F.2d 511; and Loffland Bros. v. Robert, 5 Cir. 1968, 386 F.2d 540, the pruning of that branch of jurisprudence has had the effect of destroying the significance of the distinction between the Snipes line of cases and those forming the limb to which this case clearly belongs.

In Snipes, supra, maritime law was applied in an accident that occurred on a fixed structure because that structure was located on the Outer Continental Shelf. The significance of the location of the platform was clearly called to attention when the Court said:

> "...we have a question whether Congress may treat an occurrence in this geographical area as substantially maritime even though on traditional lines an event taking place on a structure fixed permanently to the bed of the water might be regarded as non-maritime." (Emphasis supplied).

After pointing out the distinctions involved in the jurisdictional borderline cases including T. Smith & Son v. Taylor, supra, and The Admiral Peoples, supra, the Court expressly defined the limit of its holding in Snipes when it said:

> "But whether the injuries...as an academic inquiry on maritime or non-maritime jurisdiction, constitute a maritime injury under the historic standard of 'the substance and consummation of the occurence which gave rise to the cause of

> action' is not decisive. This is so because the 'Outer Continental Shelf Lands Act' itself reveals that when it is Federal,not adjacent state law to apply, Congress adopted maritime standards." Pure Oil v. Snipes, supra, at p. 65, 66.

The holding in Rodrigue, supra, did not establish a new principle of law applicable to the case of James Bible, nor did it overrule any past precedent that might reasonably have been relied upon by petitioner. The alleged reliance by petitioner upon Pure Oil v. Snipes can hardly be considered reasonable when such reliance must disregard the expressed limitations contained in that decision.

Because petitioner's case does not possess the important characteristics upon which the holding in Snipes and its progeny are quarely based--the location of the platform on the Outer Continental Shelf--the decision in Rodrigue, supra, serves only to reaffirm and extend the law that governs the instant case.

It is respectfully submitted that the reinstatement of Mr. Bible's case by extension of the non-retroactivity holding in Chevron Oil Co. v. Huson, 1971, 404 U.S. 97, as urged by petitioner would constitute a clear denial of respondent's right to the prospective application of that great body of jurisprudence upon which this Court's decision in Rodrigue, supra, is based.

The Petition for Writ of Certiorari should, therefore, be denied.

Respectfully submitted,

MOUTON, ROY, CARMOUCHE, HAILEY, BIVINS & McNAMARA

BY: _____

A. J. McNAMARA
643 Imperial Office Building
Metairie, Louisiana 70002
(504) 834-9252

CERTIFICATE

I hereby certify that a copy of the foregoing Brief in Opposition to the Petition for Writ of Certiorari has been served upon John R. Martzell and Frank C. Allen, Jr. by depositing copies of same in the United States Mails, postage prepaid, addressed to their respective offices.

Metairie, Louisiana, this _____day of September, 1972.

_____

A. J. McNAMARA